

FEDERAL MARITIME COMMISSION

DOCKET NO. 83-2

NEW ORLEANS STEAMSHIP ASSOCIATION

v.

PLAQUEMINES PORT, HARBOR AND TERMINAL DISTRICT

ORDER DEFERRING CONSIDERATION OF MOTION

The Commission issued an Order Adopting Initial Decision in the above-captioned proceeding on September 16, 1986 ("1986 Order"). The 1986 Order held that the Commission had jurisdiction over the terminal tariff of Plaquemines, Port, Harbor and Terminal District ("Plaquemines") and that certain exemptions from the tariff charges violated the provisions of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1701-1720. Other objections to the tariff charges asserted by New Orleans Steamship Association ("NOSA") were dismissed. Petitions for Review were filed with U.S. Courts of Appeals by both NOSA and Plaquemines.* NOSA also filed a Complaint for Enforcement by Injunctive Relief with the U.S. District

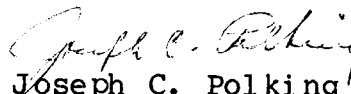
* Separate Petitions for Review were filed in the Fifth Circuit and D.C. Circuit by NOSA and Plaquemines, respectively. Subsequently, the Fifth Circuit proceeding was transferred to the D.C. Circuit and consolidated with Plaquemines' action. Plaquemines Port, Harbor and Terminal District v. FMC and USA, No. 86-1517 (D.C. Cir. filed Sept. 16, 1986).

Court for the Eastern District of Louisiana seeking an injunction against the collection of any fees under Plaquemines' terminal tariff. The District Court dismissed the complaint as moot because Plaquemines had filed an amended tariff that was accepted by the Commission. New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District, No. 86-4238 (E.D. La. Jan. 16, 1987). NOSA appealed that decision to the U.S. Court of Appeals for the Fifth Circuit which affirmed the District Court ruling. New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District, 816 F.2d 1074 (5th Cir. 1987). However, the Court of Appeals also held that Plaquemines' tariff was a "nullity" between the time the Commission issued the 1986 Order and the filing of an amended tariff. Id. at 1077. As a result of this holding Plaquemines has filed a Motion for Clarification or Modification ("Motion") essentially asking the Commission to retroactively stay the 1986 Order to the date the amended tariff was filed, thereby allowing the collection of fees under the prior tariff.

The Commission takes official notice that among the issues now pending before the U.S. Court of Appeals is the question of Commission jurisdiction over Plaquemines' tariff and whether the Commission properly determined that the tariff violated the 1984 Act. If the Commission's findings of jurisdiction and Shipping Act violations are affirmed by the Court of Appeals, the Motion may present justiciable issues. However, if the 1986 Order is reversed, this Motion

will become moot. Accordingly, the Commission deems it appropriate to await a final decision from the Court of Appeals prior to addressing the Motion.

THEREFORE, IT IS ORDERED, That consideration of the Motion for Clarification or Modification filed by Plaquemines Port, Harbor and Terminal District in the above-captioned matter is deferred pending a final decision by the U.S. Court of Appeals for the District of Columbia Circuit in Plaquemines Port, Harbor and Terminal District v. F.M.C. and U.S.A., No. 86-1517 (D.C. Cir. filed Sept. 16, 1986).
By the Commission.


Joseph C. Polking
Secretary